

or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

Pro se plaintiffs must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), [550 U.S. 544, 569-70 \(2007\)](#); see also [Ashcroft v. Iqbal](#), [129 S. Ct. 1937, 1950 \(2009\)](#) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. See [Martin v. Sargent](#), [780 F.2d 1334, 1337 \(8th Cir. 1985\)](#). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), [294 F.3d 1043, 1043-44 \(8th Cir. 2002\)](#) (citations omitted).

III. DISCUSSION OF CLAIMS

Claims relating to the validity of an individual’s incarceration may not be brought in a civil rights case, regardless of the relief sought. As set forth by the Supreme Court in [Preiser v. Rodriguez](#), [411 U.S. 475 \(1973\)](#), and [Heck v. Humphrey](#), [512 U.S. 477 \(1994\)](#), if success on the merits of a civil rights claim would necessarily implicate the validity of a conviction or continued confinement of a convicted state prisoner, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceedings in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use [42 U.S.C. § 1983](#) to cast doubt on the legality of his conviction or confinement. See [Heck](#), [512 U.S. at 486-87](#).

Here, Plaintiff alleges that he did not receive adequate legal representation after he was wrongfully charged with the crime of assault and he seeks for the court to vacate his criminal sentence. (Filing No. [1](#) at CM/ECF pp. 4-5.) Plaintiff's allegations amount to a claim for ineffective assistance of counsel and necessarily implicate the validity of his conviction and current confinement. As set forth above, the court cannot address these claims in an action brought pursuant to [42 U.S.C. § 1983](#). However, the court will dismiss Plaintiff's Complaint without prejudice to reassertion in a habeas corpus or similar proceeding.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (Filing No. [1](#)) is dismissed without prejudice;
2. All pending motions are denied as moot;
3. A separate Judgment will be entered in accordance with this Memorandum and Order; and
4. The Clerk of the court is directed to send to Plaintiff the Form AO240, Application to Proceed Without Prepayment of Fees and Affidavit and the Form AO241, Petition for Relief From a Conviction or Sentence.

DATED this 5th day of January, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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